IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1005 OF 2006
Along with
Civil Application No.1704 of 2006

Shri Rajkumar Anandrao More .. Appellant.

Vs

Shri Sadhu Babu Tohmbare and ors. .. Respondents

Mr J.Shekhar i/b M/s J Shekhar & Co., for the appellant.
Mr V.A.Gangal, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 06/03/2007
PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the findings of facts recorded by the courts below, by which a suit filed by respondent no.1-plaintiff stands decreed. The suit was filed for redemption of mortgage, possession and mesne profits. It appears that the suit property was originally owned by defendant nos 2 and 3, who executed the questioned document on 13.11.1986. Thereafter, respondent no.1-plaintiff purchased the right of defendant nos 2 and 3 in the suit property and on the basis thereof, filed the present suit for redemption of mortgage contending that the questioned transaction between defendant nos. 2 and 3 and

defendant no.1 was mortgage by conditional sale. As against this, the case of defendant no.1 is that the transaction was out and out sale and not mortgage by conditional sale. I perused the judgments of the courts below and more particularly paragraphs 9,10 and 11 of the appeal court judgment. The appeal court has considered the evidence of the witnesses examined by the plaintiff as also the document and held that the parties intended to execute the mortgage by conditional sale and not a sale with condition to repurchase. After having considered the recitals in the document, the courts below have recorded a categoric finding that the document completely satisfies all conditions of the mortgage by conditional sale. Mr.Shekhar, learned counsel for the appellant, vehemently, submitted that the nature of transaction was an out and out sale and looking to the recitals in the document it cannot be said that it was mortgage by conditional sale. In support of his submission, he placed reliance upon the judgment of the Supreme Court in Ramlal and Anr Vs Phagua and ors, (2006) 1 SCC 168. In my opinion, this judgment, in view of the findings of facts recorded by the courts below, is of no avail to the appellant. I am satisfied that the findings recorded by the appeal court in respect of the nature of transaction is based on the material on record and warrants no interference by this

court in its extremely limited jurisdiction under section 100 of the CPC. In the circumstances, the second appeal stands dismissed. As a consequence thereof, the civil application for stay is rejected.

(D.B.BHOSALE,J.)